



Scottish Information
Commissioner
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Decision Notice 292/2024

Cost of compliance with request

Authority: Police Service of Scotland
Case Ref: 202401219

Summary

The Applicant asked the Authority for information relating to a peer review of the investigation into the murder of Shamsuddin Mahmood. The Authority refused to comply with the request as the cost of doing so would exceed £600. During the investigation, the Authority acknowledged that it was wrong to have argued that the cost of complying with the request would exceed the cost ceiling. The Commissioner required the Authority to issue the Applicant with a new review outcome, setting out its revised position.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 12(1) (excessive cost of compliance); 16 (Refusal of request); 21(4)(b) (Review by Scottish Public authority); 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 29 January 2024, the Applicant made a request for information to the Authority. He asked for information in relation to a peer review carried out into the investigation into the murder of Shamsuddin Mahmood in Orkney on 2 June 1994. He asked:
 - (i) Who requested that the review take place (please provide their name and rank)?
 - (ii) When was the review started (please provide the month and year)?
 - (iii) How many weeks did it take for the review to be completed?

- (iv) Who is the independent Chief Inspector who carried out the review, and which force are they from?
 - (v) How many officers, in total, carried out the review?
 - (vi) Was a report compiled on the findings of the review?
 - (vii) If so, how many pages long is this report?
 - (viii) If a report was compiled about the findings of the review, please can Police Scotland provide a copy of it. If this is unavailable in its entirety due to one of the exemptions listed in the Freedom of Information Act (Scotland) 2002, then please provide any sections summarising the findings of the peer review, such as an executive summary, introduction, or conclusion.
 - (ix) Please can you also provide a copy of any and all correspondence regarding the request that the peer review take place (including any attachments to said correspondence)
2. The Authority responded on 26 February 2024. It withheld information relating to requests (i), (ii), (iii), (v), (vi), (vii) and (ix) under section 12(1) of FOISA (excessive cost of compliance). It withheld information relating to request (iv) under section 38(1)(b) (personal data) of FOISA. It also withheld information relating to request (viii) under sections 34(1)(b) (Investigations by Scottish public authorities and proceedings arising out of such investigations), 35(1)(a) and (b) (Law enforcement) and 39(1) (Health, safety and the environment) of FOISA.
 3. On 3 March 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he believed the public interest favoured disclosure of the information. He also questioned whether section 34(1)(b) applied to the information and stated that the Authority had not properly explained why sections 35(1)(a) and 39(1) applied. He suggested that sensitive personal data could be redacted.
 4. The Authority notified the Applicant of the outcome of its review on 29 July 2024. It maintained that section 12(1) of FOISA applied to requests (i), (ii), (iii), (v), (vi), (vii) and (ix) and it notified the Applicant that it also now considered that section 12(1) applied to requests (iv) and (viii). The Authority withdrew its reliance on sections 34(1)(b), 35(1)(a) and (b), 38(1)(b) and 39(1) of FOISA.
 5. On 9 September 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he did not believe the cost of retrieving the peer review report (specified in request (viii)) would be excessive and he argued it should have been relatively easy to locate using digital resources.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 2 October 2024, the Authority was notified in writing that the Applicant had made a valid application, and the case was allocated to an investigating officer.

8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions about its cost calculations.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

The Authority's change of position during the investigation

10. During the investigation the Authority notified the Commissioner that it had located information which fell within the scope of the request and that it was no longer applying section 12(1) of FOISA to any part of the Applicant's request. It indicated that it was likely to apply substantive exemptions to the information falling within the scope of request (viii).
11. As the Authority has acknowledged that it wrongly applied section 12(1) in response to the Applicant's request at review stage, the Commissioner must find that the Authority failed to comply with Part 1 (and, in particular, section 1(1)) of FOISA.
12. The Commissioner now requires the Authority to provide the Applicant with a new review outcome which lists all of the exemptions that the Authority is now seeking to apply, and which explains in detail, why the Authority considers these exemptions to be relevant. This will enable the Applicant to make a new application in which he can fully challenge the Authority's reasons for withholding information from him.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant by wrongly relying on section 12(1).

He requires the Authority to provide a new response to the Applicant's requirement for review, in terms of section 21(4)(b) of FOISA by **27 January 2025**.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Head of Enforcement

11 December 2024